Form **14430-A**
(July 2013)

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
05ITE Instructor/Teacher	☐ Employee ☒ Contractor
UILC	Third Party Communication: ☒ None ☐ Yes

I have read Notice 441 and am requesting:

- ☐ Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- ☐ Delay based on an on-going transaction
- ☐ 90 day delay

For IRS Use Only:

Facts of Case

The firm is in the business of operating a health club. The worker provided services as a personal trainer for the firm's members. He received a Form 1099-MISC for his services in 2012 to 2014. There was no written agreement.

The firm told the worker to train clients in weight loss progression, according to the worker; however, the firm noted that if a gym member requested personal training, the firm assigned the worker, based on his availability, to provide a free consultation. The worker noted that he would also show new customers around the facility and inquire about their health goals. He was not obligated to be at the gym other than for scheduled training sessions between himself and the client. The firm noted that the worker could invite potential customers to join the firm's gym (or any other gym); however, only gym members could use the firm's facility. Both parties agreed that the worker provided his own leads; the firm noted he could accept or reject any from the firm. The firm indicated that the worker was not obligated to have his own developed leads use the firm's gym unless the lead is already a member of the firm's gym. Each party indicated that the other determined the methods by which the assignments were performed. Both agreed that the firm would resolve any issues or problems with its gym members. The worker was required to submit reports indicating the dates and times he trained the client in order to be paid; the worker noted that providing assessments and cleaning the gym were required activities. Both parties agreed that there was no set daily routine; the worker's hours were based on the his clients' training sessions. The firm noted that the worker/trainer coordinated the schedule directly with the member/client. Both parties agreed that the worker provided his services at the firm's gym. Only the worker mentioned weekly meetings to attend or he would be written up. Both also agreed that the worker provided the services personally-there were certification requirements.

The firm provided the facility and the equipment. The worker provided the program, time, and his certification. The firm noted that the worker was paid 50% of his personal training fee agreed upon. Base pricing was set by the gym with the worker negotiating higher or lower pricing directly with each member according to the firm.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The worker mentioned a noncompete rule; the firm indicated that there was no such agreement. The relationship ended when the worker was fired.

Analysis

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

There are significant similarities between this case and Revenue Ruling 70-338, 1970-1 C.B. In the ruled case, the teachers instructing private lesson pupils in return for a percentage of fees collected by a music conservatory were not employees. There was no guarantee of students and 80% of students enrolled as a result of the teacher's activities. The conservatory had no control over the time or manner that lessons were given but did require that certain standards were met. Teachers had the right to reject any student assigned to them. The conservatory had no right of control over the manner in which the teacher conducted his private lessons or gave instructions.

Essentially the worker was a part-time instructor at the gym, working when needed and as available. Much like the teachers (group 2) referred to the above ruled case, the worker in this instant case provided private personal training to clients of the firm. He obtained the 'pupils' by providing a free consultation, some scheduled by the firm, to promote his services and obtain new clients. The firm's clients paid the firm and the firm paid the worker a percentage of the price he negotiated with the client. According to the firm, this arrangement occurred to protect the gym's clients. The time and manner of the worker's services were determined by the worker and the client; the firm did not schedule training sessions between the two parties. So although the worker indicated that he had to clean and provide assessments, he was not paid for those services. The clients paid the firm for the worker's services and the firm paid the worker weekly for any training sessions provided and paid for by the firm's clients. The facts show that the firm did not exercise or have the right to exercise the degree of direction and control necessary to establish an employer-employee relationship under the usual common law rules.

Based on the above analysis, we conclude that the worker is an independent contractor and not an employee of the firm. Accordingly, the worker's income is not subject to the Federal Insurance Contributions Act tax (FICA), Federal Unemployment Tax Act (FUTA), or the collection of income tax at the source of wages.

This determination is based on the application of law to the information presented to us and/or discovered by us during the course of our investigation; however, we are not in a position to personally judge the validity of the information submitted. This ruling pertains to all workers performing services under the same or similar circumstances. It is binding on the taxpayer to whom it is addressed; however, section 6110(k)(3) of the Code provides it may not be used or cited as precedent.